

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

**DETERMINATION OF ROYALTY
RATES AND TERMS FOR MAKING
AND DISTRIBUTING PHONORECORDS
(*PHONORECORDS IV*)**

**Docket No. 21-CRB-0001-PR
(2023-2027)**

**DECLARATION OF IVANA DUKANOVIC IN SUPPORT OF SPOTIFY USA
INC.'S OPPOSITION TO COPYRIGHT OWNERS' MOTION TO COMPEL
DISCOVERY RELATED TO RATE PROPOSAL**

I, Ivana Dukanovic, declare as follows:

1. I am a member in good standing of the State Bar of California. I am an associate at Latham & Watkins LLP and counsel for Spotify USA Inc. ("Spotify") in this proceeding. I submit this Declaration in support of Spotify's Opposition to Copyright Owners' Motion to Compel Discovery Related to Rate Proposal and Spotify's designation of certain portions of the Opposition and supporting materials as "Restricted." I have personal knowledge of the facts set forth in this Declaration and, if called to testify as a witness, I could and would testify competently.

A. Meet And Confer Efforts

2. Beginning as early as November 23, 2021, counsel for Spotify has been in conversation with counsel for Copyright Owners—through email, letters, and video conferences—about Spotify's responses and objections to Copyright Owners' discovery requests. The parties were able to reach agreement on many but not all of the issues. Below I summarize portions of

this meet and confer process that are relevant to Copyright Owners' present Motion and Spotify's Opposition to the same.

3. On November 23, 2021, I participated in the first of many meet and confer videoconferences with counsel for Copyright Owners. During that initial meeting, I expressed that it was entirely improper for Copyright Owners to use this rate-setting proceeding to perform an audit-like exercise of Spotify's books and records in connection with requests related to Spotify's rate proposal. I memorialized this concern in a follow-up email on December 8, 2021. That email identified Copyright Owners' Requests for Production ("RFPs") Nos. 3, 5, 33, and 173-176 as audit-like and not proportional to the needs of this litigation. Attached hereto as **Exhibit 1** is a true and correct copy of the December 8, 2021 correspondence between counsel for Spotify and counsel for Copyright Owners.

4. On November 30, 2021, December 1, 2021, and December 16, 2021, all before the close of discovery (December 23, 2021), Spotify communicated this same position on separate meet and confer videoconferences with counsel for Copyright Owners. It did the same after the close of discovery, including over videoconference on December 29, 2021 and January 10, 2022 and in writing on December 26, 2021 and January 5, 2022. Attached hereto as **Exhibit 2 and Exhibit 3** are true and correct copies of the December 26, 2021 and January 5, 2022 correspondence, respectively.

5. In email correspondence on December 8, 2021, counsel for Spotify informed counsel for Copyright Owners that, in response to RFP No. 3, Spotify would produce a spreadsheet containing all the relevant inputs for its rate proposal, including total royalty calculations. Ex. 1 at 12. On December 23, 2021, [REDACTED]

[REDACTED]

6. During the December 1, 2021 meet and confer, Spotify took the position that it would not provide the exact level of detail requested in Copyright Owners' Interrogatory No. 8 because it was not directly related to Spotify's written direct case, was unduly burdensome, and resembled an audit on the part of Copyright Owners. [REDACTED]

[REDACTED]

7. On December 22, 2021, Spotify amended its response to Interrogatory No. 8 to provide that limited information. Attached hereto as **Exhibit 4** is a true and correct copy of Spotify's Amended Responses and Objections to Copyright Owners' Second Set of Interrogatories.

8. In email correspondence the following day, counsel for Copyright Owners told counsel for Spotify that the detail requested as part of the compromise was insufficient. Ex. 2 at 22. On December 26, 2021, I again explained to counsel for Copyright Owner [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] t. *Id.* at 21.

9. Spotify also lodged and maintained burden objections with respect to Interrogatory No. 8. *See, e.g.,* Ex. 4 at 43-44. Providing an exact response would be burdensome. Spotify personnel informed me that [REDACTED]

[REDACTED]

[REDACTED]

10. Based on discussions with Spotify personnel, I also understand that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. During the meet and confer period, counsel for Spotify and counsel for Copyright Owners also discussed Interrogatory Nos. 5 and 6, related to Spotify's revenue calculations, in detail. Interrogatory No. 5 asks Spotify to identify and explain how it calculates revenues for each of its offerings, including which data repositories are queried, all queries and code used, data points gathered, etc. Ex. 4 at 40-41. Spotify took the position—as early as December 1, 2021—that it calculates its revenue consistent with the applicable regulations. Counsel for Spotify memorialized that position both in its amended responses and objections, served on December 22, 2021 (*id.* at 40-41), and in its December 26, 2021 email correspondence to Copyright Owners. Ex. 2 at 21.

12. With respect to Interrogatory No. 6, Spotify took the position—again as early as December 1, 2021—that Spotify produced all the information Copyright Owners needed. In email correspondence on December 8, 2021, Spotify directed Copyright Owners to the relevant license agreements and instructed them to compare the revenue definitions in those agreements to the relevant regulations to identify any differences. Ex. 1 at 15. Consistent with Copyright Owners' requests, during a December 29, 2021 meet and confer videoconference, Spotify referred

Copyright Owners to the revenue data it produced in connection with reports it provides to the Major record labels. Without any explanation, on January 26, 2022, Copyright Owners informed Spotify [REDACTED]

[REDACTED] Attached hereto as **Exhibit 5** is a true and correct copy of that correspondence.

13. On January 14, 2022, I attended another meet and confer videoconference with counsel for Copyright Owners. At that time, counsel for Spotify explained to counsel for Copyright Owner [REDACTED]

[REDACTED] I understand from Spotify personnel familiar with the reporting and technical operations that [REDACTED]

14. In addition, at no point during the meet and confer period did counsel for Copyright Owners raise subparts (f), (g), or (m) of RFP No. 3, or in conjunction with those subparts RFP No. 4, with counsel for Spotify. Had they done so, counsel for Spotify would have advised them that no non-privileged, responsive documents existed.

15. On December 22, 2021, prior to the close of discovery, counsel for the Services and counsel for Copyright Owners agreed that, in recognition of the difficulty of obtaining client input and sign-off on motion to compel briefing over the holiday period—when in-house counsel and participant employees were largely out of office—no participant would file a motion to compel before January 10, 2022. Counsel for the Services reserved all rights to challenge the timeliness

of any motions to compel filed after that date. Attached as **Exhibit 6** is a true and correct copy of this correspondence.

B. Spotify's Document Productions

16. Over the course of this proceeding, Spotify has produced 14 different production volumes in response to Copyright Owners' preliminary disclosure requests and direct discovery requests. Spotify completed its production on December 23, 2021, within the 60-day statutory discovery period. As detailed below, Spotify's February 2, 2022 production reflected either follow-up compromises that were made between counsel during the meet and confer process, or corrections to documents to ensure the parties and Judges have a clear and accurate record. Below I briefly discuss specific document productions that are relevant to Copyright Owners' present Motion and Spotify's Opposition to the same.

17. On December 23, 2021, in response to RFP No. 3 and Interrogatory No. 1, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Attached hereto as **Exhibit 7** is a true and correct copy of the [REDACTED]

18. [REDACTED]
[REDACTED]
[REDACTED] On January 26, 2022, [REDACTED]
[REDACTED]. Ex. 5 at 52.

19. On February 2, 2022, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]. Attached hereto as **Exhibit 8** is a true and correct copy of the [REDACTED]

20. Based on discussions with internal Spotify personnel, I understand that the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] It is my understanding that this spreadsheet, to the best of Spotify's knowledge, is the operative step-by-step spreadsheet that reflects its rate proposal in *this* proceeding. To that end, it

21. On February 2, 2022, Spotify also produced [REDACTED]

[REDACTED]
[REDACTED] Attached hereto as **Exhibit 9** is a true and correct copy of [REDACTED] as requested by Copyright Owners in Interrogatory No. 1.

22. Concurrent with its February 2, 2022 document production, Spotify also served amended responses and objections to Copyright Owners' Interrogatory No. 1. Spotify's amended responses and objections explain [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Designation of Material as “Restricted”

24. I also submit this Declaration in support of Spotify’s designation of certain portions of its Opposition and Exhibits in support of this Declaration as “Restricted.”

25. On November 4, 2021, the Copyright Royalty Judges (“CRJs”) entered an amended protective order that limits the disclosure of “confidential information” to outside counsel of record and their staff, personnel supplied by any independent contractor with whom such attorneys work, and any outside independent consultant or expert who is assisting a participant to this proceeding (“Protective Order”). *See* Dkt. No. 25908. The participants agreed that in this proceeding, “confidential information” protectable under the Protective Order (hereinafter referred to as “Restricted materials”) “shall consist of commercial or financial information a Participant (a “Producing Participant”) or other Producer (defined below) discloses to another Participant (a “Receiving Participant”) by any means (including, but not limited to, through documents, testimony, or argument) and that the Producer has reasonably determined in good faith would, if disclosed, either: (1) result in a competitive disadvantage to the Producer; (2) provide a competitive advantage to another Participant or entity; or (3) interfere with the ability of the Producer to obtain

² [REDACTED]

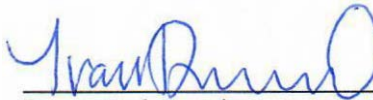
[REDACTED]

like information in the future.” *Id.* § III. Prior to the production of Restricted materials, participants must (1) mark these materials “with a conspicuous label of ‘RESTRICTED—Subject to Protective Order in Docket No. 21-CRB-0001-PR (2023-27)’”; (2) mark these materials “with highlights or brackets”; and (3) “deliver with all Restricted materials an affidavit or declaration signed under penalty of perjury listing a description of all materials marked with the ‘Restricted’ stamp and the basis for the designation.” *Id.* § IV.A.

26. I have reviewed Spotify’s Opposition and the exhibits in support of this Declaration. I have determined to the best of my knowledge, information, and belief that portions of Spotify’s Opposition and all accompanying exhibits contain non-public Restricted material protected under the Protective Order. Portion of the exhibits are protected under the Protective Order because they contain commercial or financial information that is not publicly available and that, if disclosed, would competitively disadvantage participants in this proceeding, provide a competitive advantage to another participant or entity, and interfere with the ability of participants to obtain like information from other participants or entities in the future. Restricted material is redacted in the public copies of Spotify’s filing and highlighted in gray in the restricted copies.

27. I declare in good faith, and to the best of my knowledge, that all information designated as restricted meets the definition of “confidential information” as set forth in the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct, and that I executed this Declaration on February 3, 2022 in San Francisco, California.



Ivana Dukanovic

EXHIBIT 1

PAGES 11 to 19

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 2

PAGES 20 to 23

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027) NO

REDACTED VERSION AVAILABLE

EXHIBIT 3

PAGES 24 to 34

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 4
PUBLIC VERSION
Dkt. No. 21-CRB-0001-PR (2023-2027)

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
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In the Matter of:

**Docket No. 21-CRB-0001-PR
(2023-2027)**

**DETERMINATION OF ROYALTY RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(*Phonorecords IV*)**

**SPOTIFY’S AMENDED RESPONSES AND OBJECTIONS TO COPYRIGHT OWNERS’
SECOND SET OF INTERROGATORIES TO EACH OF THE SERVICES**

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b), the Copyright Royalty Judges’ (the “Judges”) Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, dated February 9, 2021; the Judges’ Order Granting Joint Motion to Modify the Case Scheduling Order, dated August 3, 2021; and the Participants’ Direct Discovery Stipulation, dated November 2, 2021, Spotify USA Inc. (“Spotify”), by its undersigned attorneys, serves the following amended responses and objections to the National Music Publishers’ Association and the Nashville Songwriters Association International (collectively, the “Copyright Owners”) Second Set of Interrogatories (the “Interrogatories”).

GENERAL OBJECTIONS

1. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent that they impose any obligation on Spotify beyond those imposed by 37 C.F.R. § 351.5(b), 17 U.S.C. § 803(b)(6)(C)(v), and the Participants’ Direct Discovery Stipulation, dated November 2, 2021.

2. Spotify objects to the Interrogatories to the extent that they seek information that

is not directly related to Spotify's written direct statement in the *Phonorecords IV* proceeding.

3. Spotify objects to the Interrogatories to the extent that they are overbroad, unduly burdensome, or not proportional to the needs of this case.

4. Spotify objects to the Interrogatories to the extent that they are compound and include discrete sub-parts, which count as separate Interrogatories. Spotify reserves the right to raise any deficiencies related to the Copyright Owners' attempts to issue improper Interrogatories pursuant to 37 C.F.R. § 351.1(b)(2).

5. Spotify objects to the Interrogatories to the extent that they seek documents or information beyond the possession, custody, or control of Spotify or would require Spotify to spend an unreasonable amount of time, effort, and resources in order to respond. Spotify will make reasonable efforts to search for relevant information from those individuals employed by or on behalf of Spotify whom Spotify reasonably believes are likely to have responsive information associated with this remand proceeding, but each and every employee has not been, and could not be, contacted and questioned, nor their documents searched, for information that would assist in answering the Interrogatories.

6. Spotify objects to the Interrogatories to the extent that they call for information the discovery of which is cumulative or duplicative.

7. Spotify objects to the Interrogatories to the extent that they are vague or ambiguous.

8. Spotify objects to the Interrogatories to the extent that they call for the disclosure of information or materials protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege that would shield material from disclosure in whole or in part.

Spotify will exclude from its responses all information or materials protected by any applicable privilege or doctrine.

9. Except as addressed in the Participants' Amended Protective Order in this proceeding, dated November 4, 2021, Spotify objects to the Interrogatories to the extent that they seek the disclosure of information or documents that are subject to an obligation of confidentiality owed by Spotify to any third party.

10. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent that they request information and documents that are a matter of public record, in the possession of a third party, in the possession of the Copyright Owners, more properly obtained from another participant in this proceeding, or otherwise available to the Copyright Owners through a source other than Spotify.

11. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent that they incorporate, contain characterizations of, or call for legal conclusions.

12. Spotify objects to the Definitions and Instructions to the extent that they seek to impose obligations beyond those set forth in applicable law.

13. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent that they call for the creation of new or voluminous analyses or data compilations that do not currently exist in the ordinary course of Spotify's business.

14. Neither the fact that an objection is interposed to a particular interrogatory nor the fact that no objection is interposed necessarily means that responsive information exists.

15. Spotify objects to the definition of "Business Metrics" as vague, ambiguous, and overbroad. Spotify further objects to the definition of "Business Metrics" to the extent that it

seeks information not directly related to Spotify's written direct statement in this proceeding.

16. Spotify objects to the definition of "Offering" to the extent that it is vague and/or ambiguous. Spotify further objects to the definition of "Offering" to the extent that it seeks information not directly related to Spotify's written direct statement in this proceeding. Spotify also objects to the definition of "Offering" to the extent that it includes offerings not engaged in Licensed Activity and not subject to this proceeding as defined in 37 C.F.R. §385.2.

17. Spotify objects to the definition of "Pricing" as vague, ambiguous, and overbroad.

18. Spotify objects to the definition of "You" or "Your" to the extent that the definition purports to include affiliates that are neither identified nor participants in this proceeding. For the same reason, Spotify objects to the inclusion in the definition of unidentified predecessors or successors in interest.

19. No response or objection to any Interrogatory is intended to be, nor shall any response be construed as, an admission of the existence of any facts set forth in or assumed by any Interrogatory, or an admission that such response or objection constitutes admissible evidence. Likewise, the production of any documents in response to the Interrogatories is not intended to be, and shall not be construed as, a waiver by Spotify of all or any part of any objection to any Interrogatory, an admission of the existence of any facts set forth in or assumed by any Interrogatory or any document produced in response thereto, or an admission that such response, objection, or document constitutes admissible evidence.

20. Spotify's analysis of this matter is ongoing. Accordingly, these objections, and any documents or information produced in response to these Interrogatories, reflect information identified as of the time that objections and responses are served. Spotify reserves the right to

alter, amend or supplement these objections, its responses, and its document production to the extent warranted and required under the applicable rules.

21. All of these General Objections are incorporated into the Specific Objections set forth below as if repeated fully therein. The fact that Spotify may provide a response to an Interrogatory does not constitute a waiver of any general or specific objection.

OBJECTIONS TO COPYRIGHT OWNERS' INTERROGATORIES

INTERROGATORY NO. 5:

Identify and explain how You calculate Revenues for each of Your Offerings, including which data repositories are queried, all queries and code used in the data gathering and Revenues calculation process, which data points are gathered, any processes for inserting estimates, modifications, adjustments or allocations into the calculation process, and the identity of the persons/roles within Your company that are responsible for the data gathering, calculations, and approval of the Revenues calculations.

RESPONSE TO INTERROGATORY NO. 5:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It objects that the terms “Offering,” “data repositories,” “queries and code,” and “estimates, modifications, adjustments or allocations” are vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects to the Interrogatory on the ground that it is compound. Spotify further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case.

Subject to and without waiving the foregoing objections, Spotify responds that it

calculates revenues for its Section 115 license-eligible product offerings as specified in the applicable regulations. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 6:

Identify and explain each instance in which You reported to any Licensor different revenues in connection with any Eligible Digital Music Service than the Revenues that you reported for the Eligible Digital Music Service for the respective period(s) in connection with the payable royalty pool under 37 CFR Part 385. (Revenues reported quarterly should be compared to the sum of the Revenues reported for the respective three monthly periods.)

RESPONSE TO INTERROGATORY NO. 6:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It further objects that the reference to “37 CFR Part 385” is vague and/or ambiguous, rendering it unclear what comparison this Interrogatory is asking Spotify to make. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the

case. Spotify further objects to this Interrogatory to the extent that it calls for legal conclusions.

In light of the foregoing objections, Spotify will not respond to this Interrogatory.

INTERROGATORY NO. 7:

Identify all Content Licenses to which You are a party and which include a per-play or per-stream royalty rate or minimum, for the U.S. or any European territory. For each such Content License, identify the Licensor, date and term of the license agreement, and the respective royalty rates and terms.

RESPONSE TO INTERROGATORY NO. 7:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify's written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case, especially in seeking information concerning activity outside the U.S.

Subject to and without waiving its general and specific objections, Spotify responds as follows:

- SPOT_P4_000000645 [REDACTED]
[REDACTED]
- SPOT_P4_000000255 [REDACTED]
[REDACTED]
- SPOT_P4_000001077 [REDACTED]
[REDACTED]
- SPOT_P4_000001155 [REDACTED]

[REDACTED]

- SPOTRMND0006080 [REDACTED]

- SPOTRMND0005905 [REDACTED]

- SPOTRMND0006028 [REDACTED]

- SPOTRMND0005787 [REDACTED]

- Spotify Exhibit No. 66

- SPOT_P4_000005981 [REDACTED]

INTERROGATORY NO. 8:

Identify all estimates that You have used in determining any input to any calculation of the payable royalty pool under 37 CFR Part 385 for any of Your Offerings, including as to each such estimate whether the estimate was subsequently adjusted to an actual figure and the adjusted amount.

RESPONSE TO INTERROGATORY NO. 8:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It objects that the terms “Offering” and “37 CFR Part 385” are vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. Spotify further objects to the Interrogatory on the ground that it is compound.

Subject to and without waiving its general and specific objections, [REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 9:

Identify and describe each Business Metric that you Measure in connection with any product(s), service(s) or Unit(s) that involve any of Your Eligible Digital Music Services, including a description of how the Business Metric is used by You and the formula(s) or method(s) that You use to Measure the Business Metric.

RESPONSE TO INTERROGATORY NO. 9:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It objects that the terms “Measure,” “product(s),” “service(s),” “Unit(s),” and “Business Metric” are vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. It further objects to the Interrogatory on the ground that it is compound.

Subject to and without waiving the above general and specific objections, Spotify is willing to meet and confer with Copyright Owners regarding the scope and relevance of this Interrogatory.

INTERROGATORY NO. 10:

Provide the dollar amounts of all Costs for each of Your Eligible Digital Music Services, broken down monthly at each level of specificity at which they exist in Your records.

RESPONSE TO INTERROGATORY NO. 10:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It objects that the term “Costs” is vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case, including but not limited to, the extent it calls for “Costs” to be broken down “monthly” and at “each level of specificity.”

Subject to and without waiving its general and specific objections, Spotify refers Copyright Owners to the following documents provided during Preliminary Disclosures:

SPOT_P4_000001491; SPOT_P4_000002098. As noted then, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SPOT_P4_000002098.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SPOT_P4_000002098 [REDACTED]

[REDACTED]

[REDACTED] SPOT_P4_000001491 [REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 11:

Explain how You allocate costs in each cost category that is shared between Your Offerings and any other Units, including the allocation formulas for each shared cost, and the different Units across which the cost is shared.

RESPONSE TO INTERROGATORY NO. 11:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It objects that the terms “Offering”, “other Units” and “allocation formulas” are vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. Spotify further objects to the Interrogatory on the ground that it is compound. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case.

Subject to and without waiving its general and specific objections, Spotify refers Copyright Owners to the written direct testimony of Mr. Kung, [REDACTED]

[REDACTED] Kung WDT ¶¶ 34-36. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

INTERROGATORY NO. 12:

Identify all Promotional Offerings, promotions or other programs where You offered free trials or discounted the Pricing of any of Your Offerings (each a "Promotion"), including the dates and description of each Promotion, the promotional discount offered, the number of end users and plays made under the Promotion, and the number and percentage of end users and plays made under the Promotion which You included in the calculation of payable royalty pools and Plays reported under 37 CFR Part 385.

RESPONSE TO INTERROGATORY NO. 12:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It objects that the terms “Promotional Offering”, “Pricing,” “Promotion,” and “promotional discount” are vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. Spotify objects to this Interrogatory to the extent it seeks information that is publicly available or as readily available to Copyright Owners as Spotify. Spotify further objects to the Interrogatory on the ground that it is compound.

Subject to and without waiving its general and specific objections, Spotify responds as follows:

- SPOT_P4_000004592
- SPOT_P4_000002655
- SPOT_P4_000002784

- SPOT_P4_000002977
- SPOT_P4_000003091
- SPOT_P4_000003152
- SPOT_P4_000003292
- SPOT_P4_000003422
- SPOT_P4_000003530
- SPOT_P4_000003613

DATED: December 22, 2021

Respectfully submitted,

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EXHIBIT 5

PAGES 50 to 61

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 6

PAGES 62 to 73

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 7

PAGES 74 to 78

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 8

PAGES 79 to 83

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 9

PAGES 84 to 88

PUBLIC VERSION

Dkt. No. 21-CRB-0001-PR (2023-2027)

NO REDACTED VERSION AVAILABLE

EXHIBIT 10
PUBLIC VERSION
Dkt. No. 21-CRB-0001-PR (2023-2027)

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, D.C.**

In the Matter of:

**DETERMINATION OF ROYALTY RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(*Phonorecords IV*)**

**Docket No. 21-CRB-0001-PR
(2023-2027)**

**SPOTIFY’S AMENDED RESPONSES AND OBJECTIONS TO COPYRIGHT OWNERS’
FIRST SET OF INTERROGATORIES TO EACH OF THE SERVICES**

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b), the Copyright Royalty Judges’ (the “Judges”) Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, dated February 9, 2021; the Judges’ Order Granting Joint Motion to Modify the Case Scheduling Order, dated August 3, 2021; and the Participants’ Direct Discovery Stipulation, Spotify USA Inc. (“Spotify”), by its undersigned attorneys, serves the following Amended Responses and Objections to the National Music Publishers’ Association and the Nashville Songwriters Association International (collectively, the “Copyright Owners”) First Set of Interrogatories (the “Interrogatories”).

GENERAL OBJECTIONS

1. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent that they impose any obligation on Spotify beyond those imposed by 37 C.F.R. § 351.5(b), 17 U.S.C. § 803(b)(6)(C)(v), and the Participants’ Direct Discovery Stipulation.

2. Spotify objects to the Interrogatories to the extent that they seek information that is not directly related to Spotify's written direct statement in the *Phonorecords IV* proceeding.

3. Spotify objects to the Interrogatories to the extent they are overbroad, unduly burdensome, or not proportional to the needs of this case.

4. Spotify objects to the Interrogatories to the extent that they are compound and include discrete sub-parts, which count as separate Interrogatories. Spotify reserves the right to raise any deficiencies related to the Copyright Owners' attempts to issue improper Interrogatories pursuant to 37 C.F.R. § 351.1(b)(2).

5. Spotify objects to the Interrogatories to the extent that they seek documents or information beyond the possession, custody, or control of Spotify or would require Spotify to spend an unreasonable amount of time, effort, and resources in order to respond. Spotify will make reasonable efforts to search for relevant information from those individuals employed by or on behalf of Spotify whom Spotify reasonably believes are likely to have responsive information associated with this remand proceeding, but each and every employee has not been, and could not be, contacted and questioned, nor their documents searched, for information that would assist in answering the Interrogatories.

6. Spotify objects to the Interrogatories to the extent they call for information, the discovery of which is cumulative or duplicative.

7. Spotify objects to the Interrogatories to the extent they are vague or ambiguous.

8. Spotify objects to the Interrogatories to the extent they call for the disclosure of information or materials protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege that would shield material from disclosure in whole or in part.

Spotify will exclude from its responses all information or materials protected by any applicable privilege or doctrine.

9. Except as provided in the Participants' Amended Protective Order in this proceeding, dated November 4, 2021, Spotify objects to the Interrogatories to the extent that they seek the disclosure of information or documents that are subject to an obligation of confidentiality owed by Spotify to any third party.

10. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent they request information and documents that are a matter of public record, in the possession of a third party, in the possession of the Copyright Owners, more properly obtained from another participant in this proceeding, or otherwise available to the Copyright Owners through a source other than Spotify.

11. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent they incorporate, contain characterizations of, or call for legal conclusions.

12. Spotify objects to the Definitions and Instructions to the extent that they seek to impose obligations beyond those set forth in applicable law.

13. Spotify objects to the Interrogatories, and all Instructions and Definitions thereto, to the extent that they call for the creation of new or voluminous analyses or data compilations that do not currently exist in the ordinary course of Spotify's business.

14. Neither the fact that an objection is interposed to a particular interrogatory nor the fact that no objection is interposed necessarily means that responsive information exists.

15. Spotify objects to the definition of "Offering" to the extent that it is vague and/or ambiguous. Spotify further objects to the definition of "Offering" to the extent that it seeks

information not directly related to Spotify's written direct statement in this proceeding. Spotify also objects to the definition of "Offering" to the extent it includes offerings not engaged in Licensed Activity and not subject to this proceeding as defined in 37 C.F.R. §385.2.

16. Spotify objects to the definition of "You" or "Your" to the extent that the definition purports to include affiliates that are neither identified nor parties to this proceeding. For the same reason, Spotify objects to the inclusion in the definition of unidentified predecessors or successors in interest.

17. No response or objection to any Interrogatory is intended to be, nor shall any response be construed as, an admission of the existence of any facts set forth in or assumed by any Interrogatory, or an admission that such response or objection constitutes admissible evidence. Likewise, the production of any documents in response to the Interrogatories is not intended to be, and shall not be construed as, a waiver by Spotify of all or any part of any objection to any Interrogatory, an admission of the existence of any facts set forth in or assumed by any Interrogatory or any document produced in response thereto, or an admission that such response, objection, or document constitutes admissible evidence.

18. Spotify's analysis of this matter is ongoing. Accordingly, these objections, and any documents or information produced in response to these Interrogatories, reflect information identified as of the time that objections and responses are served. Spotify reserves the right to alter, amend or supplement these objections, its responses, and its document production to the extent warranted and required under the applicable rules.

19. All of these General Objections are incorporated into the Specific Objections set forth below as if repeated fully therein. The fact that Spotify may provide a response to an

Interrogatory does not constitute a waiver of any general or specific objection.

RESPONSES AND OBJECTIONS TO COPYRIGHT OWNERS' INTERROGATORIES

INTERROGATORY NO. 1:

For each of Your Offerings, provide for each month during the Relevant Time Period: (a) Your payable royalty pool under 37 C.F.R. § 385.21(b); and (b) Your payable Mechanical Royalties, calculated using the rates, terms and definitions of Your Rate Proposal as if such rates, terms and definitions had been in effect during the applicable month, and taking account of all discounts, reductions, deductions and allocations that You would be permitted to make under Your Rate Proposal.

RESPONSE TO INTERROGATORY NO. 1:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify's written direct statement. It objects that the term "Offering", as referenced in this Interrogatory, is vague and/or ambiguous. Spotify further objects to the characterization of certain products as "Discount" products when they are distinct products, with their own pricing, offered to certain segments of consumers meeting specific criteria. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it calls for responses with respect to all Offerings, as that term is defined by Copyright Owners. Spotify further objects to the Interrogatory on the ground that it is compound. Spotify further objects to this Interrogatory to the extent it incorporates, contains characterizations of, or calls for legal conclusions. Spotify further objects to this Interrogatory to the extent that it seeks documents that are protected by the

attorney-client privilege, work-product doctrine, or other privileges and protections.

Subject to and without waiving its general and specific objections, Spotify responds as follows: As written, subpart (a) appears to ask Spotify to calculate the total payable royalty pool and royalties under the vacated *Phonorecords III* rates and terms. Those rates and terms are not the currently applicable rates and are not directly related to Spotify's written direct case. This information is not only irrelevant, but also, to the extent not already in Copyright Owners' possession, unduly burdensome to produce and not proportional to the needs of this proceeding, which is tasked with evaluating the Participants' proposals in this proceeding and not the hypothetical results of an intermediate determination in another pending proceeding.

With respect to subpart (b) of Interrogatory No. 1, Spotify directs Copyright Owners to SPOT_P4_000009057 (RESTRICTED), reproduced concurrently with this response, which reflects Spotify's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SPOT_P4_000009057 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SPOT_P4_000009057 [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

[REDACTED] SPOT P4 000009057

[REDACTED]

[REDACTED]

[REDACTED] SPOT P4 000009057 [REDACTED]

[REDACTED] SPOT P4 000009057 [REDACTED]

[REDACTED]

[REDACTED] SPOT P4 000009057 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SPOT P4 000009060 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SPOT_P4_000009060 [REDACTED]

INTERROGATORY NO. 2:

Provide the Bundle Information for each Bundle offered to consumers.

RESPONSE TO INTERROGATORY NO. 2:

Spotify incorporates its General Objections, including with respect to Instructions and

2

[REDACTED]

Definitions, as if fully set forth herein. It further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify's written direct statement. Spotify further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. Spotify objects to this Interrogatory to the extent it seeks information that is publicly available, or as readily available to Copyright Owners as Spotify. Spotify further objects to this Interrogatory, including the definition of Bundle Information, as compound.

Subject to and without waiving its general and specific objections, Spotify responds as follows: During the Relevant Time Period, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- The Spotify Premium – Hulu Ad-Supported Bundle (e.g. the “Hulu-Premium bundle” mentioned above) was offered to consumers for \$9.99/month. It is no longer directly offered to non-student consumers. It included two components with the following standalone published prices: (i) a Spotify Premium plan (\$9.99); and (ii) an ad-supported Hulu plan (\$5.99).

- The Spotify Premium – Hulu Student Bundle (e.g. the Hulu Student bundle) was offered to student consumers for \$4.99/month. It is no longer offered to consumers. It included two components with the following standalone published prices: (i) a Spotify Premium Student plan (\$4.99); and (ii) an ad-supported Hulu plan (\$5.99).
- The Spotify Premium – Hulu – Showtime Student Bundle (e.g. the Hulu-Showtime Student bundle), which continues to be offered to student consumers, is offered for \$4.99/month. It includes three components with the following standalone published prices: (i) a Spotify Premium Student plan (\$4.99); (ii) an ad-supported Hulu plan (\$5.99); and (iii) a Showtime ad-free streaming plan (\$10.99).
- The Spotify Premium – AT&T Bundle (e.g. the AT&T bundle) was offered by AT&T to consumers. [REDACTED]
[REDACTED] It included Spotify Premium (\$9.99) as a component, [REDACTED] It is no longer offered to consumers. [REDACTED]
[REDACTED]
[REDACTED] such information would be publicly available, or as readily available, to Copyright Owners as to Spotify.

INTERROGATORY NO. 3:

Identify each field of User Data that You gather, compile or store (directly or via a third party) in connection with Your Eligible Digital Music Services, and for each User Data field

identify whether data in such data field has been accessed, or is subject to access under any past, current or planned Agreement, by You or any third party for any purpose other than the provision of Licensed Activity, including for: marketing or advertising purposes; provision of other products or services or other lines of Business; or sale or other consideration. For each such access type, describe the type of access, all consideration received in connection with the access, and identify any related Agreement(s) providing or allowing for the access, along with the agreement term and the parties to the agreement. “Access” herein shall include any type of use, access, copying or reference.

RESPONSE TO INTERROGATORY NO. 3:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It further objects to this Interrogatory on the ground that the terms “data field” and “access” are vague and/or ambiguous. Spotify further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify’s written direct statement. It further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. Spotify further objects to this Interrogatory to the extent that it purports to require Spotify to compile information in a manner that is not maintained in the ordinary course of business. Spotify further objects to the Interrogatory on the ground that it is compound.

In light of the foregoing objections, Spotify will not respond to this Interrogatory.

INTERROGATORY NO. 4:

Explain how You determined Your Pricing for each Offering, including what analysis or forecasts You consulted, what alternative pricing You considered, what evaluation and approval

process You utilized to arrive at final corporate decision, the person(s) who evaluated, voted on or made the final decision(s) as to Pricing, and when such decision(s) were made.

RESPONSE TO INTERROGATORY NO. 4:

Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set forth herein. It further objects to this Interrogatory to the extent that it seeks information that is not directly related to Spotify's written direct statement. Spotify further objects that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. It further objects to this Interrogatory to the extent that it purports to require Spotify to compile information in a manner that is not maintained in the ordinary course of business. Spotify objects to this Interrogatory to the extent it seeks information that is publicly available or as readily available to Copyright Owners as to Spotify. It further objects to this Interrogatory to the extent that it seeks documents that are protected by the attorney-client privilege, work product doctrine, or other privileges and protections.

Subject to and without waiving its general and specific objections, Spotify responds as follows: Pricing is a complex commercial decision. In pricing each of its offerings, Spotify considers several key variables within the relevant product market, including but not limited to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the United States,³ Spotify currently prices its individual Premium Service at \$9.99/month. Spotify continuously assesses the price of the Premium Service for the purpose of maximizing revenue over time. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Spotify's Family Plan first launched in 2014 at a price of \$14.99/month. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Currently, the Family Plan offering allows for up to six Premium accounts for family members

³ Unless otherwise indicated, all prices referenced in Spotify's responses and objections to Copyright Owners' Interrogatory No. 4 are U.S. prices.

under one roof at \$15.99/month. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Spotify's standard Student Plan is priced at \$4.99/month. It is priced accordingly to target a specific cohort of lower willingness-to-pay consumers—students. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In 2020, Spotify launched Duo, a subscription plan unique to Spotify that allows for two people living in the same household to subscribe to Spotify Premium together for \$12.99/month.

Duo is intended [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Spotify further directs Copyright

Owners to Spotify Ex. 24 (RESTRICTED), as attached to Mr. Kaefer's written direct testimony.

[REDACTED]

[REDACTED]

As to Spotify's bundles, outlined in detail in Interrogatory No. 2, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DATED: February 2, 2022

Respectfully submitted,

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EXHIBIT 11

PAGES 105 to 107

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Dkt. No. 21-CRB-0001-PR (2023-2027)

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EXHIBIT 12

PAGES 108 to 119

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Proof of Delivery

I hereby certify that on Thursday, February 03, 2022, I provided a true and correct copy of the Declaration of Ivana Dukanovic in support of Spotify USA Inc.'s Opposition to Copyright Owners' Motion to Compel Discovery Related to Rate Proposal [Public] to the following:

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Google LLC, represented by Gary R Greenstein, served via ESERVICE at ggreenstein@wsgr.com

Apple Inc., represented by Mary C Mazzello, served via ESERVICE at mary.mazzello@kirkland.com

Amazon.com Services LLC, represented by Joshua D Branson, served via ESERVICE at jbranson@kellogghansen.com

Joint Record Company Participants, represented by Susan Chertkof, served via ESERVICE at susan.chertkof@riaa.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Copyright Owners, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Zisk, Brian, represented by Brian Zisk, served via ESERVICE at brianzisk@gmail.com

Signed: /s/ Joseph Wetzel